

A BILL TO BE ENTITLED

AN ACT

relating to the jurisdiction of the Public Utility Commission of Texas over the sale of water between municipal corporations; amending the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), by adding Section 17A.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. The Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), is amended by adding Section 17A to read as follows:

"Section 17A. (a) Without regard to other provisions of this Act and for the purpose of regulating rates and services so that such rates may be fair, just, reasonable and nondiscriminatory, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over water rates, operations and services provided by a municipal corporation to another municipal corporation where the municipal corporation providing water service holds permits to appropriate public water from five or more reservoirs and provides water to ten or more incorporated cities or towns.

"Section 17A. (b) The commission shall provide for rates under this section using the cash basis and rates shall be fixed at a level that will permit the municipal water supplier to pay all operating, maintenance, depreciation, replacement, betterment and interest charges necessary and attributable to providing service to customers and to establish and maintain an interest and sinking fund sufficient to pay any outstanding indebtedness incurred for the purpose of purchasing, constructing or improving the facilities used for supplying service. In fixing rates, the commission may allow additional profits to the municipal water supplier based upon and limited to the need for such additional profit as a condition to incurring indebtedness for the purpose of providing service to the municipal water supplier's customer cities.

"Section 17A. (c) In this section, "municipal corporation" includes cities and incorporated villages or towns existing, created or organized under the general, home-rule, or special laws of the state."

Section 2. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

By Clower

S.B. No. 935

Substitute the following for S.B. No. 935

By

C.S.S.B. No. 935

A BILL TO BE ENTITLED

AN ACT

relating to the rate-making authority of the Texas Water Rights Commission; amending Section 6.056, Water Code.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

Section 1. Section 6.056, Water Code, is amended to read as follows:

"Sec. 6.056. RATE-FIXING POWER. (a) The commission shall fix reasonable rates for the furnishing of water for any purpose mentioned in Chapter 5 or 6 of this code as provided in this section.

"(b) The term 'political subdivision,' when used in this section, means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

"(c) The term 'governmental entity,' when used in this section, means incorporated cities, towns or villages, water or utility districts which provide retail water service within the boundaries of an incorporated city, town, or village, and river authorities that purchase wholesale treated water from a 'regional municipal water utility,' as such term is herein defined, for the benefit of an incorporated city, town, or village, and resell such water to such incorporated city, town, or village.

"(d) The term 'regional municipal water utility,' when used in this section, means an incorporated city which holds a permit to

1 appropriate public water and provides wholesale treated water
2 service to five or more governmental entities under 'wholesale
3 water utility contracts' as such term is herein defined.

4 "(e) The term 'wholesale water utility contract,' when used
5 in this section, means a contract with a primary term of five years
6 or longer between an incorporated city and a governmental entity
7 whereby the incorporated city agrees to provide wholesale treated
8 water service to the governmental entity and the incorporated city
9 retains the right and power to set revised rates from time to time.

10 "(f) The term 'permanent water utility customer,' when used
11 in this section, means:

12 "(1) any governmental entity receiving wholesale
13 treated water service from a regional municipal water utility under
14 a wholesale water utility contract:

15 "(2) any governmental entity that was receiving
16 wholesale treated water service from a regional municipal water
17 utility on January 1, 1977, if such governmental entity will agree
18 to a wholesale water utility contract on terms the commission
19 determines are consistent with other wholesale water utility
20 contracts between the regional municipal water utility and other
21 governmental entities: and

22 "(3) any governmental entity which the regional
23 municipal water utility may at any time agree to provide wholesale
24 treated water service under a wholesale water utility contract.

25 "(g) Before a regional municipal water utility may make a
26 change in rates for service to its permanent water utility
27 customers, it shall file a schedule of its proposed rates with each

1 of its permanent water utility customers and the commission,
2 accompanied by written justification for such rate change and such
3 information as may be required by the commission's rules and
4 regulations. Such proposed change in rates shall not become
5 effective until 90 days from the date such schedule of proposed
6 rates, justification, and information are filed with the
7 appropriate officer of each permanent water utility customer and
8 the commission. The regional municipal water utility shall
9 promptly provide to its permanent water utility customers and the
10 commission any reasonable information requested by any permanent
11 water utility customer in relation to such proposed rate change.

12 "(b) Within 30 days from the date a proposed change in rates
13 has or will become effective, a permanent water utility customer
14 may file a petition for rate review with the commission complaining
15 of such changed rates and on the filing of such petition for rate
16 review, the effect of such rates shall be stayed as to the
17 complaining permanent water utility customer for a period of 30
18 days from the date such proposed change in rates has or will become
19 effective. The commission shall give full and priority
20 consideration to any such petition for rate review to determine if
21 such rates are reasonable. On a final determination, the
22 commission shall determine the level of rates to be charged by the
23 regional municipal water utility for the service to the complaining
24 permanent water utility customer and shall fix the same by order to
25 be served on the regional municipal water utility and such rates
26 shall thereafter be observed until changed as provided by this
27 section.

1 "(i) Rates of a regional municipal water utility in effect
2 on the effective date of this Act may be challenged by a permanent
3 water utility customer by filing with the commission a petition for
4 rate review which the commission shall consider in full on its
5 merits.

6 "(i) The commission shall provide by rules for petitioning
7 for rate review by a permanent water utility customer complaining
8 of any water rates being charged at any time by a regional
9 municipal water utility.

10 "(k) In any proceeding before the commission on a petition
11 for rate review, the regional municipal water utility shall have
12 the burden to prove that its rates for service to its permanent
13 water utility customers are reasonable.

14 "(l) On the filing of a petition for rate review, the
15 commission may establish interim rates. If the rates finally
16 ordered are in excess of the interim rates, each permanent water
17 utility customer paying interim rates shall make up the difference
18 with interest at the statutory rate. If the interim rates are in
19 excess of the final rates, the regional municipal water utility
20 shall refund the excess with interest at the statutory rate.

21 "(m) The commission in reviewing rates set by a regional
22 municipal water utility for its permanent water utility customers
23 shall use either the 'cash basis' or the 'utility basis' as those
24 terms are herein defined to determine if such rates are reasonable.
25 The commission will consider the historic relations of the parties
26 and the past methods of setting rates by the regional municipal
27 water utility, in determining whether the 'cash basis' or the

1 'utility basis' is the more just and equitable basis to be used.
2 The terms 'cash basis' and 'utility basis' are defined and shall be
3 applied by the commission as follows:

4 "(1) Under the 'cash basis,' rates shall be fixed at a
5 level that will permit the regional municipal water utility to pay
6 all operating, maintenance, replacement, betterment, and interest
7 charges necessary and attributable to providing service to
8 permanent water utility customers and to establish and maintain an
9 interest and sinking fund sufficient to pay any outstanding
10 indebtedness incurred for the purpose of purchasing, constructing,
11 or improving the facilities used for supplying service. Additional
12 revenues shall be allowed to the regional municipal water utility
13 to meet any cash reserve requirements or coverage requirements
14 contained in the outstanding revenue bond ordinances of the
15 regional municipal water utility to enable the regional municipal
16 water utility to incur additional debt for the purpose of providing
17 service to its permanent water utility customers.

18 "(2) Under the 'utility basis,' rates shall be fixed
19 at a level but not more than the level that will permit the
20 regional municipal water utility to recover its reasonable
21 operating expenses properly allocable to providing service to its
22 permanent water utility customers together with a fair return on
23 its invested capital. Invested capital means the value of the
24 property used by and useful to the regional municipal water utility
25 in providing service to its permanent water utility customers
26 including where necessary to the financial integrity of the
27 regional municipal water utility construction work in progress at

1 cost. As may be determined in the discretion of the commission,
2 the value of such property shall be at original cost less
3 depreciation or at adjusted value. If the commission should
4 determine that the value of such property should be at adjusted
5 value, the adjusted value shall be a reasonable balance between
6 original cost less depreciation and current cost less an adjustment
7 for both present age and condition, in which case the commission
8 shall have the discretion to determine a reasonable balance that
9 reflects not less than 60 percent nor more than 75 percent of the
10 original cost less depreciation and not less than 25 percent nor
11 more than 40 percent of the current cost, less an adjustment for
12 both present age and condition. The rate of return is the revenue
13 earned by a regional municipal water utility from its operations in
14 providing service to its permanent water utility customers, over
15 and above properly allocable operating expenses, expressed as a
16 percentage of the original cost or the adjusted value of invested
17 capital. The return shall be reasonably sufficient to assure
18 confidence in the financial integrity of the regional municipal
19 water utility's service operation and shall be adequate, under
20 efficient and economical management, to maintain its credit and
21 attract the capital necessary for the proper discharge of its
22 duties to its permanent water utility customers. In determining
23 the amount of revenues necessary to satisfy these requirements, the
24 commission may consider inflation, deflation, quality of service
25 being provided, growth rate of the service area, and the need for
26 the regional municipal water utility to attract new capital. In
27 each case, the commission shall consider the cost of capital to the

1 regional municipal water utility.

2 "(n) The commission in reviewing and fixing reasonable rates
3 for furnishing water in all other cases under this section may use
4 any reasonable basis for fixing rates as may be determined by the
5 commission to be appropriate under the circumstances of the case
6 being reviewed.

7 "(o) In no case shall the commission fix rates that a
8 political subdivision may charge for service at a level that would
9 be less than that required under the 'cash basis' as defined in
10 Subsection (m) of this section.

11 "(p) The commission shall provide by rules, not in conflict
12 with the provisions of this section, for petitioning for review of
13 rates for the furnishing of water under this section.

14 "(q) The commission may establish interim rates and compel
15 service during the pendency of any rate proceeding.

16 "(r) The commission may order a refund or assess additional
17 charges from the date a petition for rate review is received by the
18 commission of the difference between the rate actually charged and
19 the rate fixed by the commission, plus interest at the statutory
20 rate.

21 "(s) Notwithstanding any provision of this section, the
22 commission shall not have jurisdiction to review or fix rates that
23 an incorporated city may charge its citizens."

24 Sec. 2. No action or proceeding commenced prior to January
25 1, 1977, before the Texas Water Rights Commission shall be affected
26 by the enactment of this Act.

27 Sec. 3. Nothing herein contained shall be construed to

1 repeal or amend the Public Utility Regulatory Act (Article 1446c,
2 Vernon's Texas Civil Statutes).

3 Sec. 4. The importance of this legislation, the crowded
4 condition of the calendars in both houses, and the confusion
5 concerning the applicability of Texas Water Code Section 6.056 to
6 municipalities and other political subdivisions create an emergency
7 and an imperative public necessity that the constitutional rule
8 requiring bills to be read on three several days in each house be
9 suspended, and this rule is hereby suspended, and that this Act
10 take effect and be in force from and after its passage, and it is
11 so enacted.

Relating to the jurisdiction of the Public Utility
Commission of Texas over the sale of water between
municipal corporation.

349-72

Filed with the Secretary of the Senate

MAR 10 1977

Read, referred to Committee on NATURAL RESOURCES

Reported favorably.

Reported adversely, with favorable Committee Substitute; Committee Substitute
read first time.

Ordered not printed.

Senate and Constitutional Rules to permit consideration suspended by

{ unanimous consent.
_____ yeas, _____ nays.

To permit consideration, reading and passage, Senate and Constitutional Rules
suspended by vote of _____ yeas, _____ nays.

Read second time and { ordered engrossed.
passed to third reading.

Caption ordered amended to conform to body of bill.

Senate and Constitutional 3-Day Rules suspended by vote of
_____ yeas, _____ nays to place bill on third reading and final passage.

Read third time and passed by { a viva-voce vote.
_____ yeas, _____ nays.

OTHER ACTION:

Secretary of the Senate

Engrossed

Sent to HOUSE

ENGROSSING CLERK